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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 THOMAS JAMES WELLS, III,

10 Plaintiff,

11 v.

12 V. MAES, et al.,

13 Defendants.

NO. C17-473-JCC-JPD

REPORT AND  
RECOMMENDATION

14 I. INTRODUCTION AND SUMMARY CONCLUSION

15 Plaintiff, who is confined at the Coyote Ridge Corrections Center in Connell,  
16 Washington, has filed this *pro se* civil rights action pursuant to 42 U.S.C. § 1983. Dkt. 4. This  
17 matter comes before the Court upon defendants Seattle Police Department (“SPD”) Officers V.  
18 Maes and F. Reyes’ motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) and Fed. R. Civ. P.  
19 41(b) because plaintiff’s claims, which relate to the circumstances of his arrest in downtown  
20 Seattle on March 25, 2014, are barred by the *Heck* doctrine. Dkt. 16. To date, plaintiff has not  
21 opposed the motion. For the reasons discussed below, defendants’ unopposed motion to  
22 dismiss, Dkt. 16, is GRANTED, and this matter is DISMISSED without prejudice to plaintiff  
23 bringing a new action raising these claims should he satisfy the *Heck* pleading requirements in  
24 the future.

REPORT AND RECOMMENDATION

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## II. DISCUSSION

### A. Background

On March 23, 2017, plaintiff filed a motion to proceed *in forma pauperis* (“IFP”) in this action, which the Court granted, along with his proposed civil rights complaint. Dkts. 1, 1-1, 3. Plaintiff’s complaint describes the circumstances of his arrest in downtown Seattle on March 25, 2014. Dkt. 4 at 3-12. Specifically, plaintiff alleges that he was standing at a bus stop shortly after 6:30 a.m. when several men in uniforms jumped out of a “D.O.C. van” and ordered plaintiff to “stop you come here.” *Id.* at 4. Plaintiff ran from the men, who he believed to be officers of the Department of Corrections, and they began chasing him. Plaintiff “had a firearm that I fumbled with slung under my right armpit. I dropped it right before exiting the alley[.]” *Id.* at 5. After dropping the firearm he was carrying, plaintiff boarded a public transit bus. The uniformed men ordered the bus to stop, boarded the bus, and arrested plaintiff. *Id.* Plaintiff asserted that the search of his pockets incident to his arrest revealed ammunition, money, and drug paraphernalia. *Id.* He asserts that “they did not say I was being detained. Also did not read me my rights before going in my pockets.” *Id.* Plaintiff believes the officers mistakenly thought plaintiff “was someone out on D.O.C. community custody on the run with a warrant and just started chasing me” instead of existing their vehicle and approaching plaintiff properly “for a warrant check.” *Id.* at 7. He alleges that his arrest amounted to an illegal stop and seizure, and requests \$3.5 million each from Officer Maes and Officer Reyes in damages. *Id.* at 7, 12.

After the Court had initially directed service of plaintiff’s complaint in April 2017, the Court was advised in June 2017 that the two defendants in this action, Officers V. Maes and F. Reyes, were SPD officers rather than the employees of the Washington Department of Corrections as alleged in plaintiff’s complaint. Dkts. 3, 5, 8. After the Court again directed

1 service on the defendants, Dkt. 10, defendants promptly appeared and filed a motion to dismiss  
2 arguing that plaintiff's claims are barred by *Heck v. Humphrey*, 512 U.S. 477, 486–487 (1994).  
3 Dkt. 16. Specifically, defendants allege that following his arrest plaintiff pled guilty to  
4 (1) violation of the uniform controlled substances act (possession of cocaine) with a deadly  
5 weapon enhancement, and (2) unlawful possession of a firearm in the second degree. Dkt. 17  
6 (Hicks Decl.), Ex. A. Plaintiff was sentenced to a total of thirty-five months confinement with  
7 the Department of Corrections, set to run concurrently with a 79-month sentence imposed in a  
8 separate case. Dkt. 17 (Hicks Decl.), Exs. B-C.

9 B. Legal Standard

10 In *Heck*, the U.S. Supreme Court held that “in order to recover damages for allegedly  
11 unconstitutional conviction or imprisonment, or for other harm caused by actions whose  
12 unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that  
13 the conviction or sentence has been reversed on direct appeal, expunged by executive order,  
14 declared invalid by a state tribunal authorized to make such determination, or called into  
15 question by a federal court's issuance of a writ of habeas corpus[.]” *Heck*, 512 U.S. at 486–  
16 487. The Supreme Court further held that “[a] claim for damages bearing that relationship to a  
17 conviction or sentence that has not been so invalidated is not cognizable under § 1983.” *Id.* at  
18 487. The Supreme Court explained that when a “prisoner seeks damages in a § 1983 suit, the  
19 district court must consider whether a judgment in favor of the plaintiff would necessarily  
20 imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed  
21 unless the plaintiff can demonstrate that the conviction or sentence has already been  
22 invalidated.” *Id.*

1 Accordingly, *Heck* makes it clear that a § 1983 “cause of action for damages  
2 attributable to an unconstitutional conviction or sentence does not accrue until the conviction  
3 or sentence has been invalidated.” *Heck*, 512 U.S. at 489–90 (footnote omitted). Any such  
4 claim is not cognizable and therefore should be dismissed. *See Edwards v. Balisok*, 520 U.S.  
5 641, 649 (1997); *Butterfield v. Bail*, 120 F.3d 1023, 1025 (9th Cir. 1997) (claim barred by  
6 *Heck* may be dismissed under Rule 12(b)(6)); *Trimble v. City of Santa Rosa*, 49 F.3d 583, 585  
7 (9th Cir. 1995) (claim barred by *Heck* may be dismissed sua sponte without prejudice under 28  
8 U.S.C. § 1915).

9 C. Plaintiff’s Claims are Barred by *Heck*

10 As noted above, plaintiff alleges that uniformed officers attempted to stop him while he  
11 was standing on a public street with a semi-automatic rifle slung under his arm, and that he was  
12 arrested after he ignored the officers’ orders to “come here” and ran away instead. Dkt. 4 at 4.  
13 Plaintiff concedes that the officers’ search incident to the arrest revealed that he had  
14 ammunition and drug paraphernalia in his pockets. *Id.* at 5. Plaintiff ultimately pled guilty to  
15 criminal charges stemming from this March 25, 2014 arrest, and he was sentenced to  
16 confinement with the Department of Corrections as a result. Dkt. 17 (Hicks Decl.), Exs. A-B.<sup>1</sup>

17 To prevail on his claims that the March 25, 2014 arrest and subsequent search violated  
18 his civil rights, plaintiff would have to show that defendants had no probable cause to arrest  
19 him. If meritorious, plaintiff’s claims would necessarily imply the invalidity of his subsequent  
20 prosecution and conviction. As discussed above, *Heck* bars claims challenging the validity of a  
21 prosecution or conviction in the § 1983 context until the conviction or sentence has been  
22 invalidated. *See Guerrero v. Gates*, 357 F.3d 911, 918 (9th Cir. 2004) (*Heck* barred plaintiff’s

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23 <sup>1</sup> The Court may take judicial notice of court records, both within and outside the  
24 federal judicial system, if those proceedings have a direct relation to matters at issue in this  
case. *Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007). *See also* Fed. R. Evid. 201.

1 claims of wrongful arrest, malicious prosecution and conspiracy among police officers to bring  
2 false charges against him); *Cabrera v. City of Huntington Park*, 159 F.3d 374, 380 (9th Cir.  
3 1998) (*Heck* barred plaintiff's false arrest and imprisonment claims until conviction was  
4 invalidated); *Smithart v. Towery*, 79 F.3d 951, 952 (9th Cir. 1996) (*Heck* barred plaintiff's  
5 claims that defendants lacked probable cause to arrest him and brought unfounded criminal  
6 charges against him).

7       Thus, any challenge to plaintiff's arrest, conviction or sentence "must be brought as a  
8 petition for a writ of habeas corpus, not under § 1983." *Smithart v. Towery*, 79 F.3d 951, 952  
9 (9th Cir. 1996). Plaintiff has already challenged the validity of his prosecution and conviction  
10 in state court by filing two personal restraint petitions which were considered, and ultimately  
11 denied, by the Washington State Court of Appeals. Dkt. 17 (Hicks Decl.), Exs. D-E.<sup>2</sup> As far  
12 as the Court is aware, however, plaintiff has not filed a federal habeas petition relating to his  
13 conviction and sentence. Plaintiff cannot currently mount a challenge under 42 U.S.C. § 1983  
14 because *Heck* makes it clear that a § 1983 "cause of action for damages attributable to an  
15 unconstitutional conviction or sentence does not accrue until the conviction or sentence has  
16 been invalidated." *Heck*, 512 U.S. at 489–90. Thus, plaintiff's claims under § 1983 are not  
17 cognizable, and should be dismissed.

18       Accordingly, the Court recommends that defendants' motion to dismiss, Dkt. 16, be  
19 GRANTED, and that plaintiff's complaint, Dkt. 4, be DISMISSED without prejudice to  
20 plaintiff bringing a new action raising these claims should he satisfy the *Heck* pleading  
21 requirements in the future.

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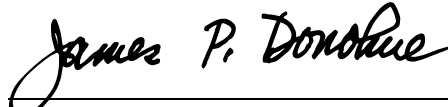
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23       <sup>2</sup> Specifically, the Court of Appeals denied plaintiff's claims after finding that plaintiff  
24 had failed to establish prejudice arising from constitutional error or non-constitutional error  
resulting in a miscarriage of justice, or that he was being unlawfully restrained. Dkt. 17 (Hicks  
Decl.), Exs. D-E.

1 A proposed order accompanies this Report and Recommendation. The Clerk is  
2 directed to send copies of this Order to plaintiff and to the Honorable James P. Donohue.

3 Objections to this Report and Recommendation, if any, should be filed with the Clerk  
4 and served upon all parties to this suit by no later than **October 16, 2017**. Failure to file  
5 objections within the specified time may affect your right to appeal. Objections should be  
6 noted for consideration on the District Judge's motion calendar for the third Friday after they  
7 are filed. Responses to objections may be filed within **fourteen (14)** days after service of  
8 objections. If no timely objections are filed, the matter will be ready for consideration by the  
9 District Judge on **October 20, 2017**.

10 This Report and Recommendation is not an appealable order. Thus, a notice of appeal  
11 seeking review in the Court of Appeals for the Ninth Circuit should not be filed until the  
12 assigned District Judge acts on this Report and Recommendation.

13 DATED this 25th day of September, 2017.

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15   
16 JAMES P. DONOHUE  
17 Chief United States Magistrate Judge  
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